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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION
OF H2O, INC., FOR AN EXTENSION OF
ITS CERTIFICATE OF CONVENIENCE
AND NECESSITY.

DOCKET NO. W-02234A-00-0371

IN THE MATTER OF THE APPLICATION
OF JOHNSON UTILITIES, L.L.C., DBA
JOHNSON UTILITIES COMPANY FOR AN
EXTENSION FOR ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY TO
PROVIDE WATER AND WASTEWATER
SERVICE TO THE PUBLIC IN THE
DESCRIBED AREA IN PINAL COUNTY,
ARIZONA.

DOCKET NO. W-02987A-99-0583

**RESPONSE TO DIVERSIFIED WATER
UTILITIES, INC.'S MOTION TO
INTERVENE AND MOTION IN
OPPOSITION TO APPLICATIONS AND
TO CONTINUE HEARINGS**

H2O, Inc. ("H2O") hereby opposes the applications of Diversified Water Utilities, Inc. ("Diversified") for leave to intervene in this proceeding and to continue the hearing date.

Under Rule 14-3-105 of the Arizona Administrative Code, persons seeking to intervene in proceedings before the Arizona Corporation Commission (the "Commission") must demonstrate that they are "directly and substantially affected" by the proceedings. See A.A.C. R14-3-105. In addition, the rule provides that "[n]o application to intervene shall be granted where by so doing the issues theretofore presented will be unduly broadened." Id.

1 Diversified's motion to intervene states that its participation is necessary in order to ensure
2 that the requirements of A.R.S. § § 40-281 and 40-282 are met.¹ Diversified's participation is not
3 necessary in order to assess whether a public need exists for any water provider to serve the area.
4 Similarly, Diversified's participation is not necessary in order for the Commission to address
5 whether the public interest will be serviced by granting H2O's application. Lastly, Diversified's
6 suggestion that granting H2O's application may interfere with Diversified's operations is nonsense.
7 A.R.S. § 40-281(B) permits a utility to bring a complaint if another utility is or is about to interfere
8 with "already constructed" lines, plant or systems. H2O's proposed facilities do not interfere with
9 the operation of Diversified's existing facilities. Consequently, the statute does not provide a basis
10 for Diversified's complaint.
11

12 Allowing Diversified to interpose its application at this late date would be highly prejudicial
13 to H2O. H2O's application was filed on May 30, 2000, and accepted as administratively complete
14 on June 29, 2000, therefore, a decision must be issued within 150 days from that date. H2O's
15 application has already been delayed once to accommodate Johnson Utilities' application. In
16 contrast, Diversified's application is grossly deficient. There is absolutely no possibility that
17 Diversified's application could be completed and decided within the time allotted for a decision on
18 H2O's application. A.A.C. R14-2-411.
19

20 Of the thirteen requirements for an application to extend a CC&N, Diversified's application
21 contains none of the required information. A.A.C. R14-2-402(A)(2). Therefore, under the
22 Commission's rules, Diversified's application may not be set for hearing at this time, and it is
23 uncertain when it would be appropriate to do so. A.A.C. R14-2-402. Consequently, H2O's
24

25 _____
26 ¹ As discussed below, Diversified's application to extend its certificated area conflicts with H2O's existing

1 application may be placed on hold for months simply waiting for Diversified to file a complete
2 application.

3 Further, Diversified's claim that it is ready to serve the expanded area is belied by the fact
4 that Diversified's application does not provide any of the required information. If in fact
5 Diversified had plans to expand, it could have filed those plans with its application in accordance
6 with the Commission's rule. Diversified's application not only shows that it is not ready to serve
7 the expanded area, but also that its intervention would result in substantial delay of H2O's
8 application.
9

10 Diversified's motion to continue also objects to the applications of H2O and Johnson
11 Utilities. While Diversified complains extensively about Johnson Utilities application, there is
12 virtually no complaint about H2O's ability to serve. Diversified merely states that evaluations must
13 be made between H2O and Diversified. At the same time, Diversified's application and complaint
14 seek to delete land from H2O's existing certificated area. In other words, while Diversified claims
15 it has planned on serving the area described in its application and claims (improperly) H2O is
16 violating A.R.S. 40-281, Diversified is asking to delete a portion of H2O's existing territory. At
17 best, assuming this error was unintentional, Diversified's "planning" has been highly irregular,
18 raising serious questions about the ability of Diversified to provide adequate service.
19

20 Lastly, Diversified claims that its due process rights will be violated if the hearing date is
21 not continued. This claim should be rejected. Notice of H2O's application was provided to the
22 public. H2O published notice of its application on June 10, 2000 in the Casa Grande Dispatch. At
23 that same time notice was mailed to all property owners located within the area covered by H2O's
24
25
26 certificated area -- a plain violation of this statute.

1 application. Additionally, notice was again mailed to all property owners in accordance with the
2 Administrative Law Judge's Procedural Order. The notice provided exceeds the Commission's
3 requirements.

4 Although Diversified now suggests that was planning on expanding its service area, it has
5 not bothered to monitor the public filings or notices of its neighboring service providers.² H2O's
6 application has been pending for over four months and notice was published over three months ago.
7 Therefore, for a service provider that was supposedly planning on serving these areas, Diversified
8 made absolutely no effort to investigate whether other service providers had already filed to serve
9 the area.
10

11 CONCLUSION

12 The foregoing demonstrates that Diversified's motions to intervene and continue the matter
13 should be denied. Diversified's Motion and related filings simply come too late. As Diversified's
14 incomplete application and violation of A.R.S. § 40-281 shows, Diversified is merely attempting to
15 improperly disrupt and interfere with H2O's application, which has been pending since May and
16 was duly noticed in accordance with Commission requirements. This sort of conduct should not be
17 tolerated.
18

19 If Diversified is allowed to intervene, its intervention should be limited to addressing the
20 narrow issue of whether H2O's application complies with A.R.S. § 40-281. Diversified should not
21 be allowed to interject its belated application and frivolous complaint into H2O's hearing. Further,
22 if Diversified's limited intervention is granted there is no need to continue the hearing. H2O is
23

24
25
26 ² Notably, Johnson Utilities, whose existing certificated area is several miles south of H2O's certificated area, obtained notice of H2O's application.

1 willing to allow Diversified extra time to file its direct testimony. Therefore, Diversified will not
2 be prejudiced by missing the deadline for filing direct testimony.

3
4 RESPECTFULLY SUBMITTED this 5th day of October, 2000.

5 FENNEMORE CRAIG, P.C.

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11 ORIGINAL and 10 copies of
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